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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,234	05/28/2002	Manfred Kopf	2400-422A	7673

27820 7590 03/28/2003

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EXAMINER

BOMBERG, KENNETH

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 03/28/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/079,234

Applicant(s)

KOPL ET AL.

Examiner

Kenneth Bomberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/214,003.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on October 20, 2000 have been approved.

### ***Specification***

2. Applicant's arguments concerning providing a statement reading "This is a national stage Application filed under 35 U.S.C. 371 of Application No. PCT/EP97/02671, filed 24 May 1997." are persuasive and the requirement is withdrawn.

### ***Information Disclosure Statement***

3. All references of record in parent application 09/214.003 have been considered. However, as applicant has failed to list the patents on a FORM PTO-1449, they will not be printed on the face of any patent issuing from this application. Should applicant wish these references to be printed, a FORM PTO-1449 listing those patents should be provided.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over NANAJI (5,630,528) in view of KOPL et al. (5,447,062).

In Fig. 3, NANAJI shows a device for metered transfer of two or more liquids from respective supply tanks (1,2,3) by respective pumps (21,22,23) to respective liquid dispensers (61,62,63), a common liquid measuring device (90), two or more upstream valves (101,102, 103) and two or more downstream valves (111,112, 113) substantially according to claim 1 but does not show the meter being in the form of a screw spindle arrangement according to the claim. NANAJI further explicitly states:

"The embodiment of FIG. 3 advantageously could use a electronically-calibrated or self-calibrating inferential meter, or any other type of meter which is of small size and weight and which does not require manual calibration."

KOPL et al. teaches to provide meter being in the form of a screw spindle arrangement in order to provide a simple meter construction which is less susceptible to faults.

It would have been obvious to one having ordinary skill in the art to have used the meter in the form of a screw spindle arrangement of KOPL et al. in the device for metered transfer of several liquids of NANAJI in order to provide a simple meter construction which is less susceptible to faults as taught by KOPL et al.

In reference to claims 2-3

NANAJI explicitly teaches:

The meter can advantageously be located near the dispensing nozzles, so that the contamination caused by using a single meter is purged after a small amount of fuel is

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dispensed. The invention preferably uses a small-volume meter with valves located near the meter, to thereby limit the amount of octane variation caused by use of a single meter.

It therefor would have been obvious to one having ordinary skill in the art to have selected the volume of the meter device in the claimed range in order to satisfy the above explicit teaching of NANAJI. The particular volume selected being a design choice based on permissible amounts octane variation.

In reference to claims 4-5

The examiner takes official notice that multi-way valve arrangements and valves interconnected in pairs are well known in the dispensing art. NANAJI does not explicitly teach the use of multi-way valves. It would have been obvious to one having ordinary skill in the art to have incorporated the use of the well know multi way valves in to the valves (101-103 and 111-113) of the device of NANAJI and KOPL et al. in order to simplify the required control circuit logic as is well known in the fluid dispensing art.

In reference to claim 5

The valves (101-103) and (111-113) of NANAJI are disclosed as being functionally interconnected in pairs. Specifically NANAJI teaches:

"Operation of the put-down switch or lever causes the controlling device 200 to send signals to the valves 101, 102, 103, 111, 112, 113 to open and close the appropriate valves. Thus, operation of the put-down switch or lever in boot 73 sends a signal to the controlling device 200 that fuel from fuel source 3 is to be dispensed out nozzle 63. As a result, the controlling device 200 closes valves 101, 102, 111, 112 and opens valves 103, 113. Activation by the operator of actuating lever 83 commences fuel dispensing from nozzle 63."

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In reference to claim 6

The examiner takes official notice that non-return valves are well known in the dispensing art to prevent back flow. NANAJI does not explicitly teach the use of non-return valves. It would have been obvious to one having ordinary skill in the art to have incorporated the use of the well know non-return valves in to the valves (101-103 and 111-113) of the device of NANAJI and KOPL et al. in order further prevent undesirable back flow and subsequent fluid contamination as is well known in the fluid dispensing art.

In reference to claim 7

As noted in the quoted section with respect to claim 5, the valves of NANAJI are associated with associated corresponding delivery nozzles (61,62,63).

In reference to claim 8

NANAJI teaches:

"Nozzles 61, 62, 63 contain actuating levers 81, 82, 83 (in FIG. 1 only actuating lever 83 is visible) to manually control the amount of fuel dispensed and rate of dispensing."; and

"Activation by the operator of actuating lever 83 commences fuel dispensing from nozzle 63."

In accordance with claim 8.

In reference to claim 9

Note the quote from NANAJI with respect to claim 5. Only a single set of valves leading to a single nozzle may be actuated at one time.

In reference to claim 10

In NANAJI, the liquids are fuels as claimed.

***Response to Arguments***

6. Applicant's arguments filed October 20, 2000 have been fully considered but they are not persuasive.

Applicant argues that the rejection under 35 U.S.C. 103(a) is improper because the motivation to combine NANAJI with KOPL et al. is improper or missing. As NANAJI explicitly teaches in the abstract that "The invention preferably uses a small-volume meter with valves located near the meter, to thereby limit the amount of octane variation caused by use of a single meter." and as KOPL et al. explicitly teaches of a fuel meter with "a simpler style of construction which is less susceptible to faults and has correspondingly fewer structural parts" (column 3, lines 103) that is clearly of a relatively small-volume the references are clearly compatible. It would have been obvious to one having ordinary skill in the art to have used the meter of KOPL et al. in the device of NANAJI in order to achieve the benefits as taught by NANAJI (as stated in the rejection). Motivation for combining comes directly from the explicit teachings of the references and not by way of impermissible hindsight as argued by the applicant.

***Conclusion***

7. This is a continuation of applicant's earlier Application No. 09/214,003. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application (the claims are the same as those finally rejected in paper number 9 of the

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parent application). Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Bomberg whose telephone number is (703) 308-2179. The examiner can normally be reached on Monday-Thursday from 9:30 AM - 7:00 PM. The examiner can also be reached on alternate Fridays.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.



KENNETH BOMBERG  
PRIMARY EXAMINER  
ART UNIT 3754

K.B.  
March 27, 2003